

Article 1A.

MH/DD/SA Consumer Advocacy Program.

(This article has a contingent effective date)

§ 122C-10. (This article has a contingent effective date – see note) MH/DD/SA Consumer Advocacy Program.

The General Assembly finds that many consumers of mental health, developmental disabilities, and substance abuse services are uncertain about their rights and responsibilities and how to access the public service system to obtain appropriate care and treatment. The General Assembly recognizes the importance of ensuring that consumers have information about the availability of services and access to resources to obtain timely quality care. There is established the MH/DD/SA Consumer Advocacy Program. The purpose of this Program is to provide consumers, their families, and providers with the information and advocacy needed to locate appropriate services, resolve complaints, or address common concerns and promote community involvement. It is further the intent of the General Assembly that the Department, within available resources and pursuant to its duties under this Chapter, ensure that the performance of the mental health care system in this State is closely monitored, reviews are conducted, findings and recommendations and reports are made, and that local and systemic problems are identified and corrected when necessary to promote the rights and interests of all consumers of mental health, developmental disabilities, and substance abuse services. (2001-437, s. 2; 2002-126, s. 10.30; 2003-284, s. 10.10; 2005-276, s. 10.27.)

§ 122C-11. (This article has a contingent effective date – see notes) MH/DD/SA Consumer Advocacy Program/definitions.

Unless the context clearly requires otherwise, as used in this Article:

- (1) "MH/DD/SA" means mental health, developmental disabilities, and substance abuse.
- (2) "State Consumer Advocate" means the individual charged with the duties and functions of the State MH/DD/SA Consumer Advocacy Program established under this Article.
- (3) "State Consumer Advocacy Program" means the State MH/DD/SA Consumer Advocacy Program.
- (4) "Local Consumer Advocate" means an individual employed and certified by the State Consumer Advocate to perform the duties and functions of the MH/DD/SA Local Consumer Advocacy Program in accordance with this Article.
- (5) "Local Consumer Advocacy Program" means a local MH/DD/SA Local Consumer Advocacy Program.
- (6) "Consumer" means an individual who is a client or a potential client of public services from a State or area facility. (2001-437, s. 2; 2002-126, s. 10.30; 2003-284, s. 10.10; 2005-276, s. 10.27.)

§ 122C-12. (This article has a contingent effective date – see note) State MH/DD/SA Consumer Advocacy Program.

The Secretary shall establish a State MH/DD/SA Consumer Advocacy Program office in the Office of the Secretary of Health and Human Services. The Secretary shall appoint a State Consumer Advocate. In selecting the State Consumer Advocate, the Secretary shall consider candidates recommended by citizens' organizations representing the interest of individuals with needs for mental health, developmental disabilities, and substance abuse services. The State Consumer Advocate may hire individuals to assist in executing the State Consumer Advocacy Program and to act on the State Consumer Advocate's behalf. The State Consumer Advocate shall have expertise and experience in MH/DD/SA, including expertise and experience in advocacy. The Attorney General shall provide legal staff and advice to the State Consumer Advocate. (2001-437, s. 2; 2002-126, s. 10.30; 2003-284, s. 10.10; 2005-276, s. 10.27.)

§ 122C-13. (This article has a contingent effective date – see note) State Consumer Advocate duties.

The State Consumer Advocate shall:

- (1) Establish Local Quality Care Consumer Advocacy Programs described in G.S. 122C-14 and appoint the Local Consumer Advocates.
- (2) Establish certification criteria and minimum training requirements for Local Consumer Advocates.
- (3) Certify Local Consumer Advocates. The certification requirements shall include completion of the minimum training requirements established by the State Consumer Advocate.
- (4) Provide training and technical Advocacy to Local Consumer Advocates.
- (5) Establish procedures for processing and resolving complaints both at the State and local levels.
- (6) Establish procedures for coordinating complaints with local human rights committees and the State protection and advocacy agency.
- (7) Establish procedures for appropriate access by the State and Local Consumer Advocates to State, area authority, and county program facilities and records to ensure MH/DD/SA. The procedures shall include, but not be limited to, interviews of owners, consumers, and employees of State, area authority, and county program facilities, and on-site monitoring of conditions and services. The procedures shall ensure the confidentiality of these records and that the identity of any complainant or consumer will not be disclosed except as otherwise provided by law.
- (8) Provide information to the public about available MH/DD/SA services, complaint procedures, and dispute resolution processes.
- (9) Analyze and monitor the development and implementation of federal, State, and local laws, regulations, and policies relating to consumers and recommend changes as considered necessary to the Secretary.
- (10) Analyze and monitor data relating to complaints or concerns about access and issues to identify significant local or systemic problems, as well as opportunities for improvement, and advise and assist the Secretary in

developing policies, plans, and programs for ensuring that the quality of services provided to consumers is of a uniformly high standard.

- (11) Submit a report annually to the Secretary, the Joint Legislative Oversight Committee on Health and Human Services, and the Joint Legislative Health Care Oversight Committee containing data and findings regarding the types of problems experienced and complaints reported by or on behalf of providers, consumers, and employees of providers, as well as recommendations to resolve identified issues and to improve the administration of MH/DD/SA facilities and the delivery of MH/DD/SA services throughout the State. (2001-437, s. 2; 2002-126, s. 10.30; 2003-284, s. 10.10; 2005-276, s. 10.27; 2011-291, s. 2.41.)

§ 122C-14. (This article has a contingent effective date – see note) Local Consumer Advocate; duties.

(a) The State Consumer Advocate shall establish a Local MH/DD/SA Consumer Advocacy Program in locations in the State to be designated by the Secretary. In determining where to locate the Local Consumer Advocacy Programs, the Secretary shall ensure reasonable consumer accessibility to the Local Consumer Advocates. Local Consumer Advocates shall administer the Local Consumer Advocacy Programs. The State Consumer Advocate shall appoint a Local Consumer Advocate for each of the Local Consumer Advocacy Programs. The State Consumer Advocate shall supervise the Local Consumer Advocates.

(b) Pursuant to policies and procedures established by the State Consumer Advocate, the Local Consumer Advocate shall:

- (1) Assist consumers and their families with information, referral, and advocacy in obtaining appropriate services.
- (2) Assist consumers and their families in understanding their rights and remedies available to them from the public service system.
- (3) Serve as a liaison between consumers and their families and facility personnel and administration.
- (4) Promote the development of consumer and citizen involvement in addressing issues relating to MH/DD/SA.
- (5) Visit the State, area authority, or county program facilities to review and evaluate the quality of care provided to consumers and submit findings to the State Consumer Advocate.
- (6) Work with providers and consumers and their families or advocates to resolve issues of common concern.
- (7) Participate in regular Local Consumer Advocate training established by the State Consumer Advocate.
- (8) Report regularly to area authorities and county programs, county and area authority boards, and boards of county commissioners about the Local Consumer Advocate's activities, including the findings made pursuant to subdivision (5) of this subsection.
- (9) Provide training and technical assistance to counties, area authority boards, and providers concerning responding to consumers, evaluating quality of care, and determining availability of services and access to resources.

- (10) Coordinate activities with local human rights committees based on procedures developed by the State Consumer Advocate.
- (11) Provide information to the public on MH/DD/SA issues.
- (12) Perform any other related duties as directed by the State Consumer Advocate. (2001-437, s. 2; 2002-126, s. 10.30; 2003-284, s. 10.10; 2005-276, s. 10.27.)

§ 122C-15. (This Article has a contingent effective date – see note) State/Local Consumer Advocate; authority to enter; communication with residents, clients, patients; review of records.

(a) For purposes of this section, G.S. 122C-16 and G.S. 122C-17, "Consumer Advocate" means either the State Consumer Advocate or any Local Consumer Advocate.

(b) In performing the Consumer Advocate's duties, a Consumer Advocate shall have access at all times to any State or area facility and shall have reasonable access to any consumer or to an employee of a State or area facility. Entry and access to any consumer or to an employee shall be conducted in a manner that will not significantly disrupt the provision of services. If a facility requires visitor registration, then the Consumer Advocate shall register.

(c) In performing the Consumer Advocate's duties, a Consumer Advocate may communicate privately and confidentially with a consumer. A consumer shall not be compelled to communicate with a Consumer Advocate. When initiating communication, a Consumer Advocate shall inform the consumer of the Consumer Advocate's purpose and that a consumer may refuse to communicate with the Consumer Advocate. A Consumer Advocate also may communicate privately and confidentially with State and area facility employees in performing the Consumer Advocate's duties.

(d) Notwithstanding G.S. 8-53, G.S. 8-53.3, or any other law relating to confidentiality of communications involving a consumer, in the course of performing the Consumer Advocate's duties, the Consumer Advocate may access any information, whether recorded or not, concerning the admission, discharge, medication, treatment, medical condition, or history of any consumer to the extent permitted by federal law and regulations. Notwithstanding any State law pertaining to the privacy of personnel records, in the course of the Consumer Advocate's duties, the Consumer Advocate shall have access to personnel records of employees of State, area authority, or county program facilities. (2001-437, s. 2; 2002-126, s. 10.30; 2003-284, s. 10.10; 2005-276, s. 10.27.)

§ 122C-16. (This Article has a contingent effective date – see note) State/Local Consumer Advocate; resolution of complaints.

(a) Following receipt of a complaint, a Consumer Advocate shall attempt to resolve the complaint using, whenever possible, informal mediation, conciliation, and persuasion.

(b) If a complaint concerns a particular consumer, the consumer may participate in determining what course of action the Consumer Advocate should take on the consumer's behalf. If the consumer has an opinion concerning a course of action, the Consumer Advocate shall consider the consumer's opinion.

(c) Following receipt of a complaint, a Consumer Advocate shall contact the service provider to allow the service provider the opportunity to respond, provide additional information, or initiate action to resolve the complaint.

(d) Complaints or conditions adversely affecting consumers that cannot be resolved in the manner described in subsection (a) of this section shall be referred by the Consumer Advocate to

the appropriate licensing agency under Article 2 of this Chapter. (2001-437, s. 2; 2002-126, s. 10.30; 2003-284, s. 10.10; 2005-276, s. 10.27.)

§ 122C-17. (This Article has a contingent effective date – see note) State/Local Consumer Advocate; confidentiality.

- (a) Except as required by law, a Consumer Advocate shall not disclose the following:
 - (1) Any confidential or privileged information obtained pursuant to G.S. 122C-15 unless the affected individual authorizes disclosure in writing; or
 - (2) The name of anyone who has furnished information to a Consumer Advocate unless the individual authorizes disclosure in writing.
- (b) Violation of this section is a Class 3 misdemeanor, punishable only by a fine not to exceed five hundred dollars (\$500.00).
- (c) All confidential or privileged information obtained under this section and the names of persons providing information to a Consumer Advocate are exempt from disclosure pursuant to Chapter 132 of the General Statutes. Access to substance abuse records and redisclosure of protected information shall be in compliance with federal confidentiality laws protecting medical records. (2001-437, s. 2; 2002-126, s. 10.30; 2003-284, s. 10.10; 2005-276, s. 10.27.)

§ 122C-18. (This Article has a contingent effective date – see note) State/Local Consumer Advocate; retaliation prohibited.

No one shall discriminate or retaliate against any person, provider, or facility because the person, provider, or facility in good faith complained or provided information to a Consumer Advocate. (2001-437, s. 2; 2002-126, s. 10.30; 2003-284, s. 10.10; 2005-276, s. 10.27.)

§ 122C-19. (This Article has a contingent effective date – see note) State/Local Consumer Advocate; immunity from liability.

- (a) The State and Local Consumer Advocate shall be immune from liability for the good faith performance of official Consumer Advocate duties.
- (b) A State or area facility, its employees, and any other individual interviewed by a Consumer Advocate are immune from liability for damages resulting from disclosure of any information or documents to a Consumer Advocate pursuant to this Article. (2001-437, s. 2; 2002-126, s. 10.30; 2003-284, s. 10.10; 2005-276, s. 10.27.)

§ 122C-20. (This Article has a contingent effective date – see note) State/Local Consumer Advocate; penalty for willful interference.

Willful interference by an individual other than the consumer or the consumer's representative with the State or a Local Consumer Advocate in the performance of the Consumer Advocate's official duties is a Class 1 misdemeanor. (2001-437, s. 2; 2002-126, s. 10.30; 2003-284, s. 10.10; 2005-276, s. 10.27.)

§ 122C-20.1: Reserved for future codification purposes.

§ 122C-20.2: Reserved for future codification purposes.

§ 122C-20.3: Reserved for future codification purposes.

§ 122C-20.4: Reserved for future codification purposes.